FARAD CONTINUATION SHEET No.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE.
CRIMINAL APPLICATION NO. 3338 OF 2004.
IN
CRIMINAL APPEAL NO. 63 OF 2002.

R.S.A. Builders. ..Applicant.
vs.
State of Maharashtra & anr. ..Respondents.

Office Notes,Office Memoranda of Coram, appearnaces,Courts's orders or directions and Registrar's orders.	:	Court's or Judge's orders

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Shri Jaideep Mishra with Nilesh Pratap Singh i/b M/s Desai & Chinoy for the applicant.

Mrs. Alda Coelho- respondent No.2 in person.

Shri D.P. Adsule, A.P.P. for the State.

CORAM: V.M.KANADE,J.
DATED: 09.02.2005.

P.C.:

1. Heard learned Counsel appearing on behalf of the applicant and respondent No.2 in person.

2. This is an application for restoration of the appeal which was dismissed for want of prosecution. Perused the application and the reply filed by the respondent No.2. Respondent No.2 has relied upon the judgment of the Supreme Court in the case of **Hari Singh**

Mann vs. Harbhajan Singh Bajwa reported in A.I.R. 2001 S.C. 43 and judgment of the Allahabad High Court in the case of **Kirti Prakash and ors vs. State of U.P. reported in 2004 Cri.L.J. 3522.** In both these cases, the Apex Court and also the Allahabad High Court have observed that the High Court has no authority to review its judgment or order under the cloak of section 482 of the Criminal Procedure Code. The Apex Court has observed that practice of filing miscellaneous petitions after disposal of the main case was unwarranted.

3. In the facts and circumstances of the case, by order dated 5th January 2004, this Court had granted two weeks time to remove office objections. Further it was observed that if office objections are not removed, the matter shall stand dismissed without reference to the Court. In the criminal application an averment is made in para 9 that the applicant was not aware of the order dated 5th January 2004 and, therefore, office objections could not be removed and consequently, the appeal

appeal was dismissed by order dated 21st January 2004. It is submitted that the only office objection which is remained to be removed is that certified copies of the orders dated 8th November 2001 and 10th December 2001 were not filed in this Court. It was submitted that the Bombay City Civil and Sessions Court, has not delivered certified copies of the said orders to the applicant and therefore, certified copies could not be filed in this Court. It is submitted that the department of the Bombay City Civil and Sessions Court is refusing to hand over copies to the applicant. In my view, the applicant has made out a case for restoration of criminal appeal. The judgments relied upon by respondent No.2 are not applicable to the facts and circumstances of the present case. The present application is filed for restoration of the appeal which was dismissed for want of prosecution since the applicant had not removed office objections.

4. In the result, criminal application

is allowed. Criminal Appeal No. 63 of 2002 is restored to file. The order dated 5th January 2004 passed by this Court is set aside. The City Civil and Sessions Court, Bombay, is directed to supply certified copies of the orders dated 8th November 2001 and 10th December 2001 within two weeks. On receipt of the certified copies, the applicant is directed to remove office objections within a period of two weeks. Liberty to apply in the event certified copies are not supplied.

5. Certified copy expedited.

(V.M.KANADE,J)